

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, March 21, 2017  
**Time:** 6:00 PM Closed Session / 7:00 PM Open  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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- CALL TO ORDER** Mayor Tran called the meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.
- PRESENT:** Mayor Tran, Vice Mayor Grilli, Councilmembers Nuñez and Phan
- ABSENT:** Councilmember Barbadillo was absent at roll call. He arrived for the Closed Session.
- CLOSED SESSION** City Council convened in Closed Session to discuss litigation and labor negotiations.
- City Council then convened in Open Session at 7:05 PM.
- ANNOUNCEMENT** City Attorney Chris Diaz announced out of closed session that the City Council concluded its negotiation with the Milpitas Police Officers Association and the new Memorandum of Understanding would be on the next Council agenda for approval.
- PLEDGE** One member of Boy Scouts Troop No. 92 led the pledge of allegiance.
- INVOCATION** Mayor Tran honored the memory of Mr. Danny Lau, Milpitas Unified School District Board Vice President, who had passed away the previous day. Councilmember Barbadillo offered a prayer to start the meeting in honor of Mr. Lau and his service to the community.
- SCHEDULE OF MEETINGS** Council Calendars/Schedule of Meetings for March and April 2017 were reviewed. No changes were suggested or made.
- PRESENTATIONS** Mayor Tran presented a commendation to honor the long service by Ms. Liz Ainsworth for her leadership of and work with the Milpitas Chamber of Commerce. She was the retired CEO and Board Chair.
- Also, women leaders of Milpitas – including City staff, School District officials and staff, and community leaders - were honored with commendations, complimentary remarks, and a short reception following a presentation by Councilmembers Nuñez and Phan.
- PUBLIC FORUM** Dana Arbaugh, resident of Milpitas for 30 years, advocated for a 4-way stop at Kennedy and Evans Roads, as was reported in a recent news article in The Milpitas Post. He described his wife riding her bicycle near a recent car crash at that site.
- Councilmember Nuñez asked if staff could look into that issue and report back to Council.
- A woman, Milpitas resident, said she almost got into an accident near the intersection mentioned. She had been driving on Old Calaveras Road and visibility was very difficult when trying to make a turn. She requested to put this item on the next Council agenda.
- Evelyn Chua, spoke for the Project 6 Club at Milpitas High School, where students have a service fair and wish to mentor younger kids in elementary school. Saturday, April 8 was the date for the service fair with a theme. She suggested recognizing the kids of Milpitas.

Andrew Ha, high school student, described Project 6 and its goals at the High School.

Victoria Huynh, Milpitas High student, spoke of her elementary school teacher, who said they could be the kindest kids around, including compassion and imagination. The teacher said the power of an idea when executed was immense.

Thu Nguyen, Milpitas High School, was posting workshops at several of the Milpitas elementary schools, to have projects for the service fair. High school students served as mentors.

Yen-vy Ngo, Milpitas High School, explained three steps that kids follow to execute their ideas.

Christopher Than, Milpitas High junior, saw the example of Victoria and saw a way for community service. Older students wanted to inspire other kids.

CJ Andrea Molo, Milpitas High student, spoke of the April 8 Service Fair at Milpitas Library Auditorium, where all were invited to come and see what the young kids could do.

Rob Means, 1421 Yellowstone, mentioned a special budget meeting with no input yet, so he wanted to give his priorities. He asked City Council to put PV panels on City Hall and the Library which could be a money generator. Deal with the global climate problem by having community choice energy.

Robert Marini, Milpitas resident, wanted a presentation on a spreadsheet but was denied that opportunity. He was told it was due to his serving on a subcommittee. Item No. 14 should be open for comment. He referred to a lawsuit by Rob Mean, regarding a ballot initiative. There were court costs either way so consider settling out of court, via a special meeting.

Ed Ackerman, resident and sports coach, requested that agenda Item No. 5 (sports fields) be moved up on the agenda, since several young sports players were in the audience.

Liz Ainsworth, Milpitas resident, said - on the intersection issue - she goes to the dog park often and observed lots more people walking on Old Calaveras Road, crossing from Kennedy. On another issue, she mentioned the sex of trees. Male trees made the pollen, which is really detrimental to those who have bad allergies due to pollen. More female trees would bring more fruit, and she asked City staff to consider that when planting new trees.

Voltaire Montemayor, Milpitas resident, would like to have a Milpitas festival one day to honor champions, with lots of floats, beauty contests, and with lots of revenue for the City.

## **ANNOUNCEMENTS**

City Manager Tom Williams reported on a meeting the previous week with residents from the neighborhood around Bob McGuire Park, which was successful. The following day, March 22, at 6:00 PM, would be the next neighborhood meeting at Pinewood Park in The Pines. Last week, members went on a tour with the Citizens Task Force on Water Rates.

Vice Mayor Grilli stated she would like to close the Council meeting with a moment of silence for Danny Lau.

Councilmember Nuñez did not see a meeting for the City Council's next steps on agenda setting, priority setting and planning. City Council met twice per month to get the City's business done, and could start doing things in a different manner. The group needed to adopt a set of rules. It takes the whole body (Council) to get change done and not only by one person. Mr. Nuñez emphasized he did not want to read of city issues in the newspaper, but rather to get work done at the Council meeting here, as listed on the agenda.

Councilmember Phan said April 3 Council subcommittee meeting on marijuana was postponed.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

**CONTRIBUTIONS**

**APPROVAL OF AGENDA**

Motion: to approve the meeting agenda, as presented

Motion/Second: Vice Mayor Grilli/Mayor Tran

Motion carried by a vote of: AYES: 5  
NOES: 0

Motion: to re-consider approval of the meeting agenda, and to move agenda item no. 5 (sports center fields) to be heard prior to agenda item no. 1 (non-rescued animals policy)

Motion/Second: Vice Mayor Grilli/Mayor Tran

Motion carried by a vote of: AYES: 5  
NOES: 0

**CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Councilmember Phan requested to pull agenda item no. 14 (amendments to solid waste service agreements) from consent.

Councilmember Nuñez requested to pull item no. 12 (purchase of patrol vehicle) from consent.

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 5  
NOES: 0

\* 8. Approve Travel to China

Approved the request for out of country travel for Councilmember Anthony Phan and Economic Development Director Edesa Bitbadal to attend the Smart City Forum and International Tourism Festival in China from March 29, 2017 to April 5, 2017 with the costs to be paid by the US China Friendship City Network.

\*10. Resolution

Adopted Resolution No. 8649 authorizing the sole source purchase of one Bergkamp FP5 Flameless Pothole Patcher from Bergkamp, Inc. for not-to-exceed \$225,000.

\*11. Agreement with Environmental Logistics

1. Awarded the bid and authorized the City Manager to execute the contract with Environmental Logistics for the Routine Disposal and Emergency Cleanup of Hazardous Materials in the initial not-to-exceed amount of \$40,000.
2. Authorized the Purchasing Agent to extend the term of the agreement annually for each of the four option years with annual price increases per the terms of the agreement and without further City Council action, except for appropriation of funds.
3. Approved a budget appropriation in the amount of \$40,000 from the General Fund to the Fire Department’s operating budget.

12. Purchase Police Vehicle

This topic was removed from consent, but not heard and continued to the next meeting.

\*13. Amendment – HydroScience Engineers

Approved Amendment No.1 to the consulting services Agreement with HydroScience Engineers, Inc. in the amount of \$75,000 to continue staff augmentation services for Utility Engineering.

**MEETING MINUTES**

Motion: to approve the City Council meeting minutes of March 1 and 7, 2017

Motion/Second: Councilmember Phan/Mayor Tran

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORTS OF OFFICERS

### 1. Consider Ordinance Related to Sale of Non-rescued animals

Mayor Tran requested this item to ask for an ordinance based on a policy adopted in several cities in the west (more than 60). He wanted the City to make a policy of not allowing the sale of non-rescued animals at retail stores. There was great support by the Humane Society, PETA and other groups. PetSmart did not sell puppy mill dogs or cats and the Mayor believed that rescue animals need to be supported.

Next, public comments were welcomed at the podium.

Robert Marini, Milpitas resident, was in support and asked Council to approve it.

Voltaire Montemayor, Milpitas resident, had fed and cared for animals.

Vice Mayor Grilli said that City policy should be addressing an issue that the City had in the community. There was no issue here in Milpitas. The Mayor was asking to spend taxpayers' money on a policy that was not an issue in Milpitas. She did not support it.

Councilmember Nuñez referred to the Mayor's comment about lots of groundwork was already done (toward preparation of an ordinance). He was keenly aware of the need to care for rescued animals. Mr. Nuñez asked the City Attorney how much work or money would be needed to work on this issue. Mr. Diaz replied there was an hourly rate his firm charged the city, and he would have to delve into the matter before he knew the costs.

Councilmember Barbadillo said the Council was looking at policy when there was an issue. Shelters had lots of stray pets housed and there were lots of unaltered animals in this community. Then there were breeders too, which was regulated. He agreed with the Mayor, and if other cities had already adopted this policy, he would agree to a policy in Milpitas knowing the issues happening with animals.

Mayor Tran noted there were fiscal impacts when non-rescued animals were not usually spayed or neutered. They multiplied so costs go out to the community. The ordinance would have a positive result. He also noted that the City Attorney's firm may have already worked on such an ordinance for another city.

Councilmember Nuñez wanted to address the cost factor and asked about breeders. City Manager Williams replied that breeders would need a business license and home business permit. Mr. Nuñez wanted to know if there were any registered dog breeders in Milpitas and the City Manager would have to research to reply to him.

Mayor Tran asked the City Manager if he could estimate the number of cats and dogs in the community. Mr. Williams said he would have to research if an animal census was done in this area, possibly by San Jose Animal Services.

Motion: to deny the Mayor's request to direct staff to prepare an ordinance not allowing the sale of non-rescued dogs and cats (animals)

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

Motion carried by a vote of: AYES: 3  
NOES: 2 (Tran, Barbadillo)

### 2. Assist Non-Profits

Councilmember Phan addressed the City Council about non-profits and services those groups provided to the community. He felt they were an extension of city services. He was concerned about federal funds being eliminated across the country for Community Development Block Grants (CDBG) and other support funds for non-profits. There was a need to review how the City helped non-profits and to seek improvements. His request was to authorize more than four hours of staff time to do this.

Mayor Tran said it was a great idea to support local non-profits. He asked Mr. Phan to be more specific on his ideas.

Vice Mayor Grilli commented this report did address a need. She asked the City Manager what City department would explore this subject. Mr. Williams replied Economic Development, Recreation, and maybe Human Resources. The Vice Mayor stated she was supportive of this idea.

Councilmember Nuñez asked if CDBG funding was the only way non-profits were funded by the City and Mr. Williams replied yes. The City Manager explained the required audit process for CDBG funding and the review of the non-profits grantees. Mr. Nuñez said he supported this request.

Councilmember Barbadillo commented on the annual program of funding CDBG for organizations. He discussed some of the various services provided. It was important to see what would happen with the budget next year.

Mayor Tran asked which staff worked on those grants. The City's Housing Manager Tim Wong managed the CDBG grants program, the City Manager replied.

Councilmember Nuñez felt that perhaps there was opportunity to refer this subject to a subcommittee of the Council. Mr. Williams responded it could be an ad hoc one or be discussed by the Finance Subcommittee. Mr. Nuñez recommended an ad hoc Council subcommittee comprised of Councilmember Phan and himself.

Mr. Phan appreciated that suggestion and urged staff take a look at revenue raising mechanisms.

Mr. Williams appreciated earlier comments by Councilmember Barbadillo (re: budget) and reviewing the CDBG process first. Then, the City could be creative in its approach to helping non-profit organizations.

Motion: to establish an Ad Hoc Subcommittee of the Council, to clarify what Councilmember Phan would like, and how he felt the City would assist, to deal with ways to assist non-profits and funding mechanisms, and to allow more than four hours of staff time on this topic

Motion/Second: Councilmember Nuñez/Mayor Tran

Motion carried by a vote of: AYES: 5  
NOES: 0

Mayor Tran then asked for comments from the audience.

Robert Marini, Milpitas resident, did not think the City could make up the \$400,000 if CDBG funds were cut by the federal government. The City could not discriminate between the organizations. He urged the City to be fair on such matters.

Tom Valore, Milpitas resident, wondered about the term "non-profit" which was different from "charitable" organizations. Examples he listed were a church, the Red Cross, or the Chamber of Commerce. Consider whether the intent was to give away money or to provide a service.

Bob Livengood, Milpitas resident and business owner, had a strong interest in working with some non-profit groups pro bono. The toughest effort for them was fundraising. The government environment was changing so CDBG was going to be on the chopping block. He supported looking at different ways to help non-profits raise money. He had some ideas on how other cities raised money for non-profits.

Voltaire Montemayor, Milpitas resident, said they lined up and made justifications.

3. Volunteer & Intern programs This item was not heard and would be continued to the next meeting.

Near 11:00 PM, Councilmember Nuñez requested to vote on whether the Council would continue the meeting and which items would be heard at the late hour.

Motion: to hear and consider agenda items no. 4, no. 6 and no. 14 and continue all items remaining to the next regular Council meeting

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5  
NOES: 0

## NEW BUSINESS

### 4. VTA Next Network

Transportation Engineer Steve Chan introduced Jim Unitas, Transit Planning Manager (and Milpitas resident) from Santa Clara Valley Transportation Authority, to introduce the Next Network: Transit Service Plan to the City Council. The catalyst for the program was the anticipated opening of Milpitas BART station. He displayed a new route map, with revised routes and likely new routes to accommodate a wide groups of riders along with some fare changes.

Mayor Tran thanked the VTA staff for his presentation.

Councilmember Nuñez asked the Recreation Services Director about any response to the maps, by senior citizens. He wanted to know if VTA staff met with representatives of the Milpitas Unified School District and Mr. Unitas replied yes.

Robert Marini, Milpitas resident, noted that across the street was a bus stop with nowhere to sit down. For seniors, he asked for an all-day pass from VTA to be made available (it was recently no longer available).

Mayor Tran asked if the Milpitas senior center could help on that request. Ms. Lorentzen explained this change was due to the new Clipper card program.

Voltaire Montemayor, Milpitas resident, spoke about Measure B which would help for getting around. He said there's a need for a shuttle bus from the BART station.

The City Council thanked Mr. Unitas, and no vote was taken.

### 5. Sports Center Sports Fields

This item was heard prior to agenda item no. 1. Recreation Services Director Renee Lorentzen gave a presentation to describe the use of the refurbished sports fields at the Milpitas Sports Center, which were very popular and reserved for almost one year. She displayed overhead the walking paths in the area, always open seven days per week.

Councilmember Barbadillo had seen the photos of damage previously at the Sports Center entry fencing. He asked what was done to curb such incidents. Staff replied it occurred with intention, and now there were more opportunities for youth in a programmed environment and staff had to educate users of the fields.

Councilmember Grilli asked how much was invested in that project and staff replied more than \$4 million, primarily by developer impact fees paid.

Councilmember Nuñez asked if other cities, with locked fields, experienced vandalism like Milpitas. Staff had not heard that feedback from Fremont, San Jose and others.

Councilmember Phan asked about developer impact fees and if those covered all the fees for constructing the project. Consider not having a locked fence, if it was not keeping people out. With more people there on the fields, less vandalism might occur. Jumping over indicated a demand for usage.

Mayor Tran invited speakers from the audience.

Albert, Milpitas resident and Sports Center member, spoke of running on the prior track at the field with natural grass. He used a field at San Jose that was never locked or kept people out. At lunch time, the field should be open to the public.

Amos, president of Milpitas Knights, said his was one of the first groups to use the new field. It was there for the kids. He was for keeping it closed up. San Jose people would come in and use it. His team keeps the field maintained nicely.

Noel Jackson, Milpitas resident for more than 35 years, watched the City grow, with more parks. He was a PAL soccer coach over the years. He had seen graffiti, bike marks on fields, and was opposed to opening the new fields up to the public all day. Better to have it locked up for safety and best care.

Robert Marini, Milpitas resident, said the City was saving a lot of money for irrigation with the artificial turf. Move ahead with artificial turf or not.

Ed Ackerman, head coach of youth soccer team whose members came to the meeting, (Vipers and FC Milpitas), thanked the Recreation Director and the users of soccer fields and cricket pitch. New families with children will use the fields in the City, and with more demand, it meant there would not be enough fields available.

Vice Mayor Grilli apologized to the coach that the young soccer players came to the meeting and had to leave before the item was heard, late in the evening.

Bernadette Gomez, Yosemite Drive, requested that the fields be open to the public. Previously she used to run at the track around the field. She'd had a stroke, and then used the field for rehabilitation. She walked around her neighborhood, but walking around the sports field would be better so please do open the track for public use.

Martha Lamdin, Milpitas resident, said the field should be unlocked during the day for use. Have entrances for people to fit through but not motorcycles or bicycles. Posted cameras could be a deterrent.

Voltaire Montemayor, Milpitas resident, urged a tower with a microphone watching the field. There were pros and cons. Use the field for an international sports competition.

Michael Tsai, Milpitas resident, agreed with Vice Mayor Grilli that it was too bad that the young kids were unable to speak at the podium. Listen to the coach, who spoke representing the players. Maybe it was a partnership opportunity to maintain the fields nicely. A compromise was needed.

Niranjan Gupta, of Milpitas Youth Soccer, was ready for the turf fields for soccer and now wanted to make the best use of those fields.

Khan, Milpitas resident, of Milpitas Soccer League, said thank you for the use of the field for his team. There was supply and demand for the playing fields. He felt the public should get more access.

Mayor Tran said the situation was ongoing over several months and was still lingering with public outcry for the fields. The sports fields served some of the low income neighborhoods of the City. He would like the field to be open during daytime for more enjoyment of the field by all neighbors. Find a compromise on how to manage use.

Councilmember Phan asked Ms. Lorentzen how many hours during the day was the field vacant. She quoted some numbers and times. He felt the field should be open to allow users around the track, and could be open during daytime, Monday - Friday, when it was locked up right now. Resolve the demand for reservations, too, he recommended.

Councilmember Nuñez was glad to learn about the exact hours and comparison to other nearby cities. He suggested to look at the impact if the School District ever decided to expand at nearby school fields. On the report from staff, the fiscal impact was stated as “none.” He disagreed with that, due to vandalism and security needs. He asked staff for recommendations.

The Recreation Director identified conflicting interests. She said there would be a budget impact for staffing needed and maintenance of the fields, if open hours were included during week days (locked now). She would have to return to Council with those figures.

Mayor Tran said social research impact could be done as well as costs for staffing to keep fields open. City Manager Williams said staff would have to manage the use of fields, in order to protect the City’s investment. Mayor Tran said to look at outcomes and quality of life for residents. He wanted balanced data gathered.

Vice Mayor Grilli said they were talking about one locked field. She had not ever heard any public outcry to keep the fields open, but rather she’d heard more comments to protect the new field. City Council needed facts/information from staff before changing anything. She wanted staff to come back with fiscal impact numbers and to have time for young people to speak and be heard.

Mayor Tran asked to have statistics about people who live in a one mile radius, socio-economic levels, and any seniors who need a place to exercise (flat field to walk).

Councilmember Phan shared Mrs. Grilli’s frustration upon seeing the youth being unable to speak at this meeting. He would like to see the field open for use by residents. He asked if this would take more than four hours of staff time, and staff replied yes.

Motion: to direct city staff to come back with appropriate reports as requested and to have all information available, then to move forward with the sports fields opening and a fiscal impact report

Motion/Second: Councilmember Phan/Vice Mayor Grilli

Mayor Tran commented that all impacts needed to be studied, including socio-economic impacts.

City Manager Williams said he needed clear direction on what to come back with.

The Mayor then suggested data on fiscal impact, risks, and to gather data about the surrounding community was important, he felt. How many folks were going to use the field, beyond those signed up, was needed.

Councilmember Nuñez called for the question.

Councilmember Phan restated his motion, as noted above, and called for compromise to achieve access for more users at the sports fields.

Councilmember Nuñez wanted to hear from experts (staff) to let the City Council know of the impacts of a change in policy, including knowing what happened to artificial turf.

Motion carried by a vote of: AYES: 5  
NOES: 0

Mr. Williams responded to the Mayor, stating that staff would try to bring this information back in April.

**6. Amend Master Agreement with VTA**

Interim City Engineer Greg Chung explained the plan to bring the Montague Expressway (near Piper Drive) Pedestrian Overcrossing, in the anticipation of the new BART station opening. It would be built for pedestrian access to BART from the Great Mall. Amendment No. 10 to the agreement with Santa Clara Valley Transportation Authority would implement the design and construction of this project. \$1.457 million in design costs would be paid by TASP development fees. \$2.664 million in construction costs also would be paid by TASP fees.

Motion: to approve the staff recommendation plus allowing the City Attorney to make minor amendments to language in the amendment

1. Approve Amendment No. 10 to the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) relating to the Silicon Valley Rapid Transit Berryessa Extension Project (GT-1063), and
2. Authorize a payment of \$1,457,150 to VTA for environmental clearance and final design of Montague Expressway Pedestrian Overcrossing at Piper Drive.

Motion/Second: Mayor Tran/Vice Mayor Grilli

Motion carried by a vote of: AYES: 4  
NOES: 1 (Nuñez)

**7. Closed Captioning**

This item was not heard and would be continued to April 4, 2017.

**ORDINANCE**

**9. Introduce Ordinance No. 41.12**

This item was not heard and would be continued to April 4, 2017.

**AGREEMENTS**

**14. Two Amendments to Agreements for Solid Waste Services**

In response to inquiry by Councilmember Phan, amendments to the two new solid waste agreements were explained by the City Manager, in particular the changes in the rate schedules for the garbage to be taken to the Kirby Canyon site (rather than Guadalupe), yielding some cost increases of 12–18% to some commercial customers.

Councilmember Nuñez noted that in the past, commercial rates were subsidized by residential rates. So now, the rates charged to residents would not change as proposed in the last contract.

Vice Mayor Grilli stated the City was trying to work collaboratively with the City's neighbor (City of San Jose) and to avoid litigation. City Council would preserve the contract agreed to, and she said that Kirby Canyon was located far from any housing.

Councilmember Phan said he was opposed to a rate hike and expressed explicit opposition to any rate hikes. To move forward with litigation, though, would burn bridges and tie up other costs. It was time to move forward so he supported reluctantly the amendments.

Motion: to approve Amendment No. 1 to the Agreement with Waste Management for Disposal of Solid Waste, and approve Amendment No. 1 to the Agreement with Garden City for Collection of Solid Waste and Collection and Processing of Recyclable Materials and Organic Materials, for all disposal of waste to occur at Kirby Canyon landfill

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of:

AYES: 5

NOES: 0

**REPORTS**

No Councilmembers' reports from Commissions and Committees were heard.

**ADJOURNMENT**

Mayor Tran adjourned the City Council meeting at 11:49 PM in memory of Danny Lau.

**The foregoing minutes were approved by Milpitas City Council on April 4, 2017.**

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**Mary Lavelle**  
**Milpitas City Clerk**